



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,488	11/30/2004	Michael Steen Degermann	U 015507-5	2856
140	7590	04/02/2007		
LADAS & PARRY 26 WEST 61ST STREET NEW YORK, NY 10023			EXAMINER THOMAS, ALEXANDER S	
			ART UNIT 1772	PAPER NUMBER
			MAIL DATE 04/02/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/516,488

Applicant(s)

DEGERMANN, MICHAEL STEEN

Examiner

Alexander Thomas

Art Unit

1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-11.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: the changes to claim 7 overcome the previous objection.



ALEXANDER S. THOMAS
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments have been considered but are not deemed persuasive. Applicant's arguments assume that the instant claims are directed to a blowing agent of cyclopentane and an additive gas of argon. However, instant claim 1 is not limited to a blowing agent of cyclopentane and an additive gas of argon. The secondary reference, Rotermund et al discloses a combination of two gases or a combination of two gases plus "further gases". The first two gases are cyclopentane and argon, the further gases may be carbon dioxide, air, etc; see column 3, lines 42-49. Cyclopentane and argon are known in the art as blowing agents (see the Final Rejection, paragraphs 3-5), therefore, either of these gases or a combination of both may be considered the blowing agent in Rotermund et al. and the "further gases" may be consider the additive gas if one of argon or cyclopentane is not considered the additive gas. In the first instance, the argon in the Rotermund et al product may be considered the blowing gas (i.e.agent) and the cyclopentane the additive gas. When this is the case it is clear from applicant's calculations in the response filed 3/19/07 that the Rotermund et al gas mixture overlaps the instantly claimed range, Rotermund et al having a range of 99:1 to 5:95, which can also be expressed as 99:1 to 19:1, and the instant claim 1 having a range of 50:1 to 400:1. Furthermore, one may consider the blowing agent in Rotermund et al to be the combination of the cyclopentane and argon, and the "further gases" as the additive as expressed in instant claim 1. Rotermund et al disclose adding the "further gases" to the blowing agent (argon and cyclopentane) in the range of "at most 60%by volumne", i.e. 0 to 60 %; see column 3, lines 50-52. The range of "at most 60% by volume" of the "further gases" would clearly overlap the instantly claimed range of additive. It would have been obvious to one of ordinary skill in the art to adjust the specific amount of additive or "further gases" in the prior art gas mixture to provide optimum properties absent a showing of unexpected results attributable to the claimed range.